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Heritage Tree Variance Package**

The following variance package is organized as follows:

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2. Staff Memorandum
3. Staff Findings of Fact
4. Environmental Board Recommendation
5. Applicant Memorandum
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7. Driving Directions
8. Exhibits 1-7



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ITEM FOR PLANNING COMMISSION

COMMISSION MEETING

DATE REQUESTED: July 12, 2011

PROJECT NAME: Robertson Hill Multi-family Development

**ADDRESS
OF PROPERTY:** 813 East 11th Street

TREE PERMIT: 10597946

NAME OF APPLICANT: Zach Hunter
Bury + Partners
512-328-0011

**CITY ARBORIST
STAFF:** Keith Mars, 974-2755
keith.mars@ci.austin.tx.us

ORDINANCE: Heritage Tree Ordinance

REQUEST: The applicant is appealing the denial of an administrative variance request to remove a 26 inch diameter heritage tree, as allowed under Land Development Code Section 25-8-644.

**STAFF
RECOMMENDATION:** Staff recommends approval based on the condition of the tree and overall tree preservation and replanting.



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MEMORANDUM

TO: Dave Sullivan, Chair
Commissioners of the Planning Commission

FROM: Keith Mars, City Arborist Program
Planning and Development Review

DATE: July 12, 2011

SUBJECT: Tree Permit for Robertson Hill Multi-Family
813 East 11th Street

REQUEST: The applicant is appealing the denial of an administrative variance request to remove a heritage tree, as allowed under Land Development Code Section 25-8-644.

Area Description

The subject property is 2.930 acres located just east of IH-35 and East 11th street. The property is zoned commercial services-mixed use- neighborhood conservation combining district- subdistrict 3 (CS-MU-NCCD). The proposed use is a multi-family development with associated parking, utilities, and water quality and detention ponds (Exhibit 1). The project is located in the Waller Creek Watershed and is subject to urban watershed regulations. The subject property is allowed 95 percent impervious cover per zoning regulations.

Tree Evaluation

The subject tree is a 26.25 inch diameter Live Oak (*Quercus fusiformis*). The tree height is 31 feet and the canopy spread is 30 feet (Exhibit 2). Foliage density is sparse as evident in Exhibit 2, which is abnormal for this species. There is also a 52" (h) x 10" (w) wound (Exhibit 3). Probing of this wound suggests decay on the posterior side of the exposed heartwood (Exhibit 3). The decaying heartwood and absence of sapwood has likely resulted in reduced movement of water and solutes, food storage, and mechanical support. The sparse foliage is likely symptomatic of this condition since research suggests there is a functional relationship between leaf area and sapwood. Consequently, reduced sapwood and associated functionality results in reduced leaf area. The condition of the tree is likely exacerbated by the lack of soil moisture and subsequent drought stress. However, it does appear the decay has been walled off from healthy functioning tissue. The condition of the tree has likely resulted in reduced lifespan and vigor though decay does not appear so extensive that the tree is hazardous. Further, the tree could not

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be considered diseased beyond rehabilitation considering that there are methods to provide treatment to the tree that would likely result in improved leaf area and functionality, though it would still be impaired from the lack of water conducting sapwood. Further observations include additional wounds, likely a result of branch failure (Exhibit 4), and prior pruning (Exhibit 5). Based on the aforementioned conditions, the subject tree has been rated poor to fair in the City Arborist evaluation (Exhibit 6).

Site Tree Preservation and Mitigation

The proposed plan is to preserve the other heritage tree onsite, a 25" Live Oak (*Quercus fusiformis*) (Exhibit 7). The applicant is also exploring the possibility of transplanting non-protected size Cedar Elms (*Ulmus crassifolia*) currently located within the building footprint to the perimeter of the property. The 25" Live Oak also displays abnormal, sparse foliage density. However, this is likely a result of drought stress rather than the impairments of the tree requested to be removed.

Variance Request

The applicant is appealing the denial of an administrative variance request to remove a heritage tree, as allowed under Land Development Code Section 25-8-644. Though the subject tree is not greater than 30" dbh, the removal request cannot be administratively approved. Staff has denied the administrative variance request since the removal request does not meet the criteria set forth in LDC 25-8-624. Please note that the apparent containment of decay in the subject tree renders the removal request unable to be administratively approved since removal is only allowed to be administratively approved if the tree is diseased and unable to be restored as stated under 25-8-624 (A)(5). Also, though a potential hazard in the future the subject tree does not meet the approval criteria of LDC 25-8-624(A)(3), which allows the removal of a heritage tree if it is an imminent hazard to life or property.

Recommendations

Staff asserts the subject tree should not be preserved due to the aforementioned assessment. However, the request does not meet administrative criteria for removal set forth in LDC 25-8-624. Thus, an appeal to the Environmental Board and Planning Commission was requested. If the Environmental Board recommends and Planning Commission approves removal staff recommends the following Environmental Criteria Manual 3.5.4 compliant mitigation:

- A comprehensive, two-year tree care plan is provided for the 25" Live Oak to remain onsite.
- A certified arborist performs any necessary pruning for construction.
- The ½ critical root zone (25' diameter or 491.0 ft²) is to receive a 3" layer of hardwood mulch.
- If possible, 26 caliper inches of trees are to be planted in TxDOT right-of-way adjacent to the property and upgradient from IH-35. If not possible, then landscape requirement trees are to be increased in diameter to the point that the inches of trees replanted satisfies both landscape and mitigation requirements. Based on conceptual plans the applicant has a shortfall of 44 inches of mitigation

inches. Therefore, this condition would result in 44 of the proposed 92 trees to be increased by 1" diameter at the time of planting.

If you need further details, please contact me at 974-2755 or keith.mars@ci.austin.tx.us.

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Keith Mars

Keith Mars, City Arborist Program
Planning and Development Review

City Arborist:
Michael Embesi

Acting Environmental Officer:
Jean Drew

Michael Embesi
Jean Drew



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**Planning and Development Review Department
Staff Recommendations Concerning Heritage Tree Variances**

Application Address: 813 East 11th Street
Size and Species of Tree(s): 26.25" Live Oak (*Quercus fusiformis*)
Reason for Request: The applicant is appealing the denial of an administrative variance request to remove a 26 inch diameter heritage tree, as allowed under Land Development Code Section 25-8-644.

Section 1 – Approval Criteria

1) The requirement for which a variance is requested prevents a reasonable access to the property.

No.

2) The requirement for which a variance is requested prevents a reasonable use of the property.

No.

3) The tree presents an imminent hazard to life or property and the hazard cannot be reasonably mitigated without removing the tree.

No.

4) Is the tree dead?

No.

5) Is the tree diseased? If so, is restoration to a sound condition practicable or can the disease be transmitted?

No. However, decay is present.

6) For a tree located on public property or a public street or easement, the requirement for which a variance is requested prevents:

a) the opening of necessary vehicular traffic lanes in a street or ally, or

b) the construction of utility or drainage facilities that may not feasibly be rerouted.

NA.

7) The applicant has applied for and been denied a variance, waiver, exemption, modification, or alternative compliance from another City Code provision which would eliminate the need to remove the heritage tree, as required in Section 25-8-646 (*Variance Prerequisite*).

No.

8) Removal of the heritage tree is not based on a condition caused by the method chosen by the applicant to develop the property, unless removal of the heritage tree will result in a design

that will allow for the maximum provision of ecological service and historic and cultural value from the trees preserved on the site.

No.

Do any of these criteria apply? Yes/No [state which # applies]
No. Therefore, findings of fact cannot be met.

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Reviewer Name: Keith Mars, City Arborist Program

Reviewer Signature: Keith Mars

Date: 6/7/11



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ENVIRONMENTAL BOARD MOTION 061511 5b

Date: June 15, 2011

Subject: Robertson Hill Multifamily Development Permit #1059746

Motioned By: Bob Anderson

Seconded By: Jon Beall

The Environmental Board recommends approval with conditions to the Robertson Hill Multifamily Development Permit #1059746. Applicant to transplant Cedar Elm trees from the site to count towards the 44 inches short fall of mitigation inches.

Staff Conditions:

- A comprehensive, two-year tree care plan is provided for the 25" Live Oak to remain onsite.
- A certified arborist performs any necessary pruning for construction.
- The ½ critical root zone (25' diameter or 491.0 ft²) is to receive a 3" layer of hardwood mulch.
- If possible, 26 caliper inches of trees are to be planted in TxDOT right-of-way adjacent to the property and upgradient from IH-35. If not possible, then landscape requirement trees are to be increased in diameter to the point that the inches of trees replanted satisfies both landscape and mitigation requirements. Based on conceptual plans the applicant has a shortfall of 44 inches of mitigation inches. Therefore, this condition would result in 44 of the proposed 92 trees to be increased by 1" diameter at the time of planting.

Board Conditions:

In addition, applicant to transplant cedar elm trees, if possible from the site to count towards the 44 inches short fall of mitigation inches.

Rationale:

Saving the Heritage Tree # 4381 and the Cedar Elms onsite if possible, will work to preserve the urban forest.

Vote: 6-0-0-1

For: Anderson, Beall, Gary, Maxwell, Neely and Schissler

Against: None

Abstain: None

Absent: Hernandez

Approved By:

Mary Gay Maxwell,
Environmental Board Chair.

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Robertson Hill Multifamily Development
813 East 11th Street
Austin, Travis County, Texas
May 2011

MEMORANDUM

Site Location:

813 East 11th Street (IH-35 and East 11th)
Austin, Travis County, Texas

Zoning:

Commercial Services - Mixed Use - Neighborhood Conservation Combining District -
Subdistrict 3 (CS-MU-NCCD).

Subdivision:

2.930 acres - Being a portion of Lot 4, and all of Lots 5-7, 14-17 Fred Carleton Subdivision of the north part of Outlot No. 1, Division "B", a subdivision in Travis County, Texas according to the map or plat hereof, recorded in Volume Z, Page 608 of the Deed Records of Travis County, Texas and a portion of East 10th Street vacated by ordinance recorded in Volume 11168, Page 1376 and a portion of East 10 ½ Street vacated by ordinance recorded in Volume 11168, Page 1376 of the Real Property Records of Travis County, Texas. And being all of Lot 2 of Robertson Hill Subdivision, of record in Document No. 200500283 of the Official Public Record of Travis County, Texas.

Watershed:

Waller Creek Watershed which is classified as an Urban Watershed.

Project Summary:

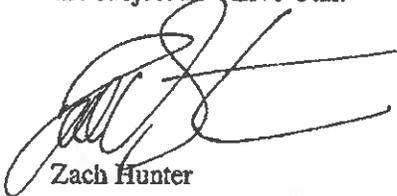
The project proposes a multi-family development with associated parking, utilities, and water quality and detention pond. The project previously had a site development permit issued March 24, 2008 which is no longer valid.

The site contains two (2) heritage trees (26" Live Oak, 25" Live Oak). The applicant has performed site visits with the City arborist to evaluate the trees onsite and the proposed site plan. The applicant has revised the site plan to preserve the 25" Live Oak on the south end of the site. We are proposing to remove the 26" Live Oak due to its current condition. Based on the meeting with the City Arborist, it was determined that the condition of the tree is average

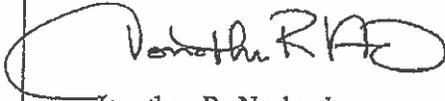
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at best, the form of it is poor and the main central trunk is gone. At the recommendation of the City Arborist, a private arborist was hired to provide a more detailed report of the condition of the tree which has been provided.

Please accept this memorandum, plan exhibits, and tree report as our formal request to remove the subject 26" Live Oak.



Zach Hunter
Associate



Jonathan R. Neslund
Senior Associate/Senior Project Manager

TBPE Registration No. "F-1048"

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DAVEY TREE EXPERTS

9224 Research Blvd.
(512) 451-4986

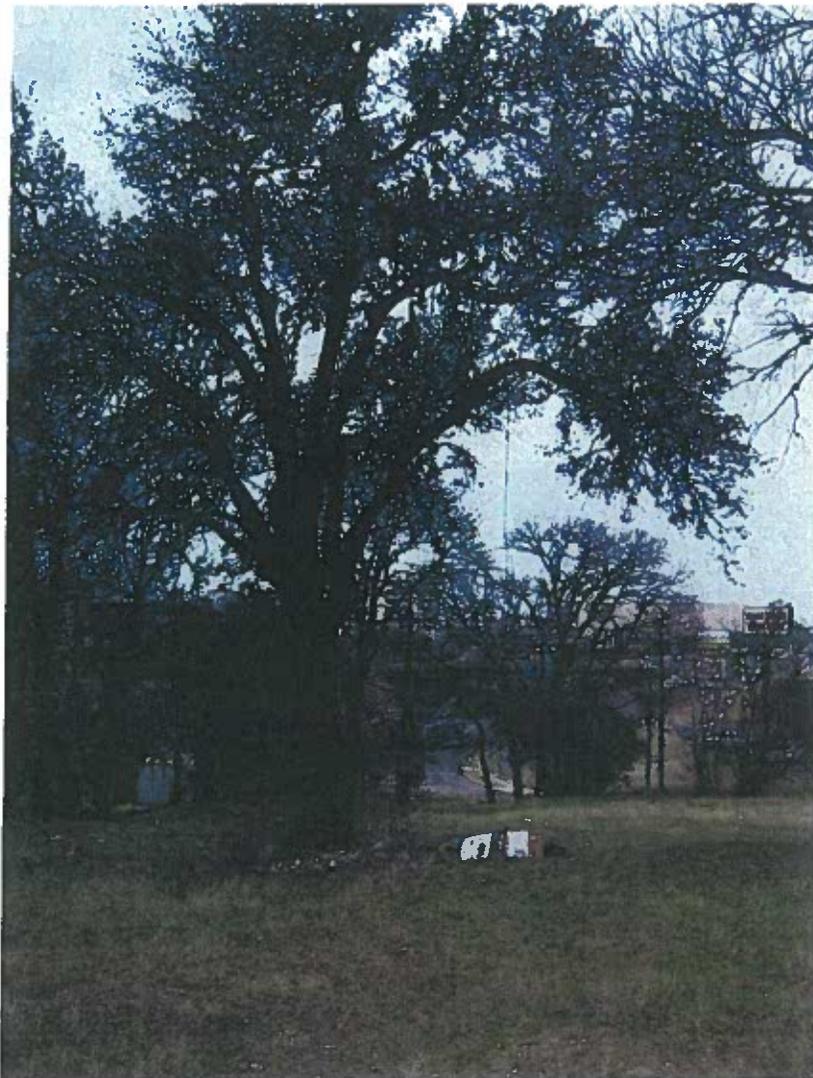
Austin, TX 78758
Fax: (512) 451-6482

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MEMORANDUM

DATE: June 1, 2011
TO: Mr. Jonathan Neslund
FROM: Daniel Hunsicker
RE: 813 E. 11th Street, Austin, TX **Tree # 4279**



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Dear Mr. Neslund,
Thanks you for the opportunity to inspect the second section of the above-mentioned property. I noted the larger 28 inch Live oak tree # 4279 has a severe cavity and freeze damage along with signs of drought stress. See photo's below

Also notice: Die back, Cavity and Thin Canopy





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Should you have any questions, please feel free to contact me at 451-4986. Thank you for your time and attention to this matter.

Sincerely,

Daniel R. Hunsicker

District Manager

Certified Arborist #TX 0309



Robertson Hill Multi-Family Development

Town Lake

Waller

Waller

10th

San Marcos

10th Half

10th

9th

E 8th To IH 35 NB

35

35

IH 35

N IH 35 SB To 8th

35

Catalpa

Olive

Curve

Juniper

Branch

12th

Sabine

11th

Waller

10th

9th

12th

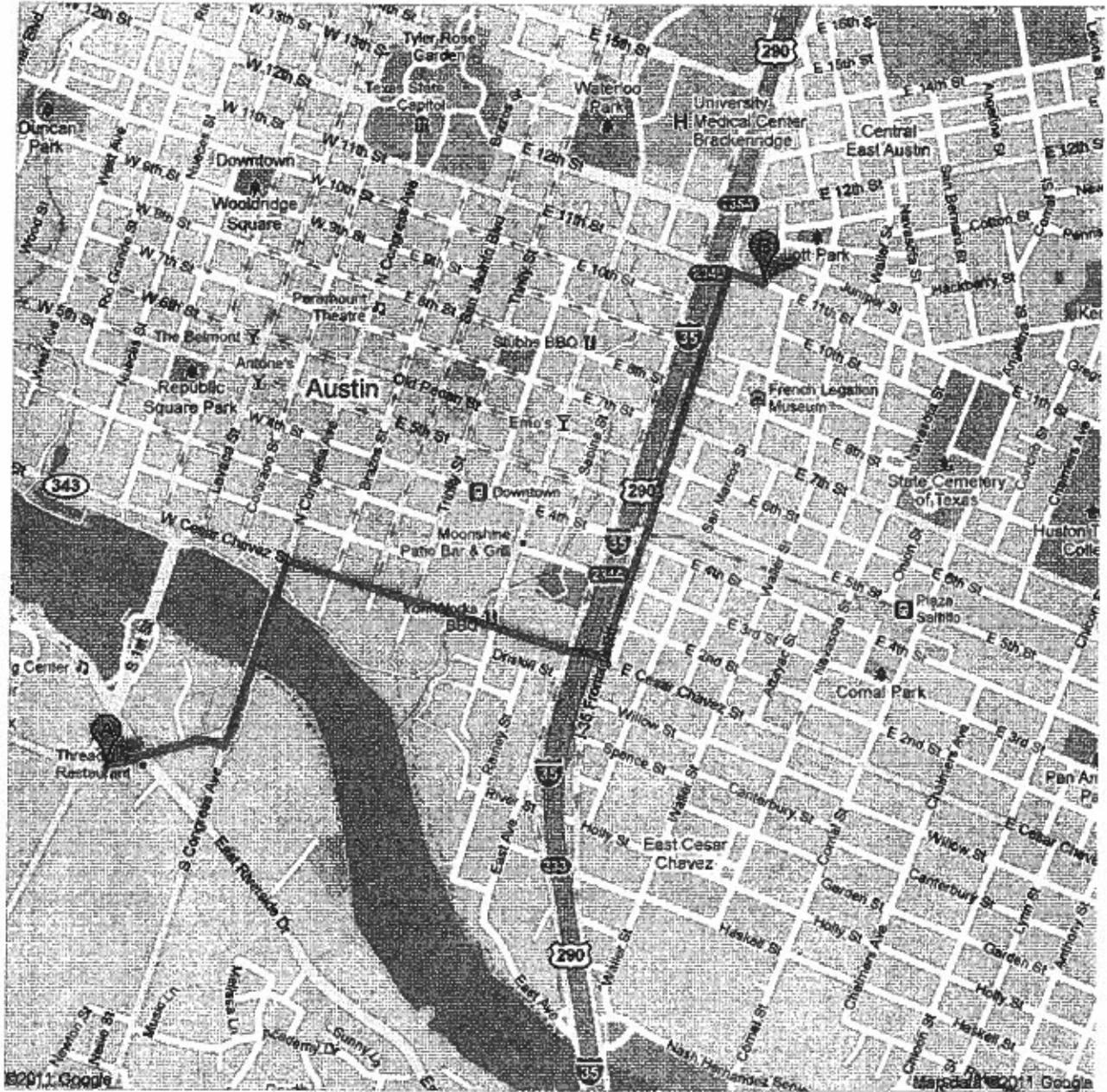
Google maps

Directions to E 11th St
1.8 mi - about 6 mins

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Save trees. Go green!

Download Google Maps on your phone at google.com/gmm



 505 Barton Springs Rd, Austin, TX 78704

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1. Head east on **Barton Springs Rd** toward **W Riverside Dr**
About 1 min go 0.2 mi
total 0.2 mi
-  2. Turn left onto **S Congress Ave**
About 1 min go 0.3 mi
total 0.5 mi
-  3. Turn right onto **E 1st St/E Cesar Chavez St**
About 2 mins go 0.5 mi
total 1.1 mi
-  4. Turn left onto **I-35 Frontage Rd**
About 2 mins go 0.7 mi
total 1.7 mi
-  5. Turn right onto **E 11th St**
go 331 ft
total 1.8 mi

 E 11th St

These directions are for planning purposes only. You may find that construction projects, traffic, weather, or other events may cause conditions to differ from the map results, and you should plan your route accordingly. You must obey all signs or notices regarding your route.

Map data ©2011 Google

Directions weren't right? Please find your route on maps.google.com and click "Report a problem" at the bottom left.

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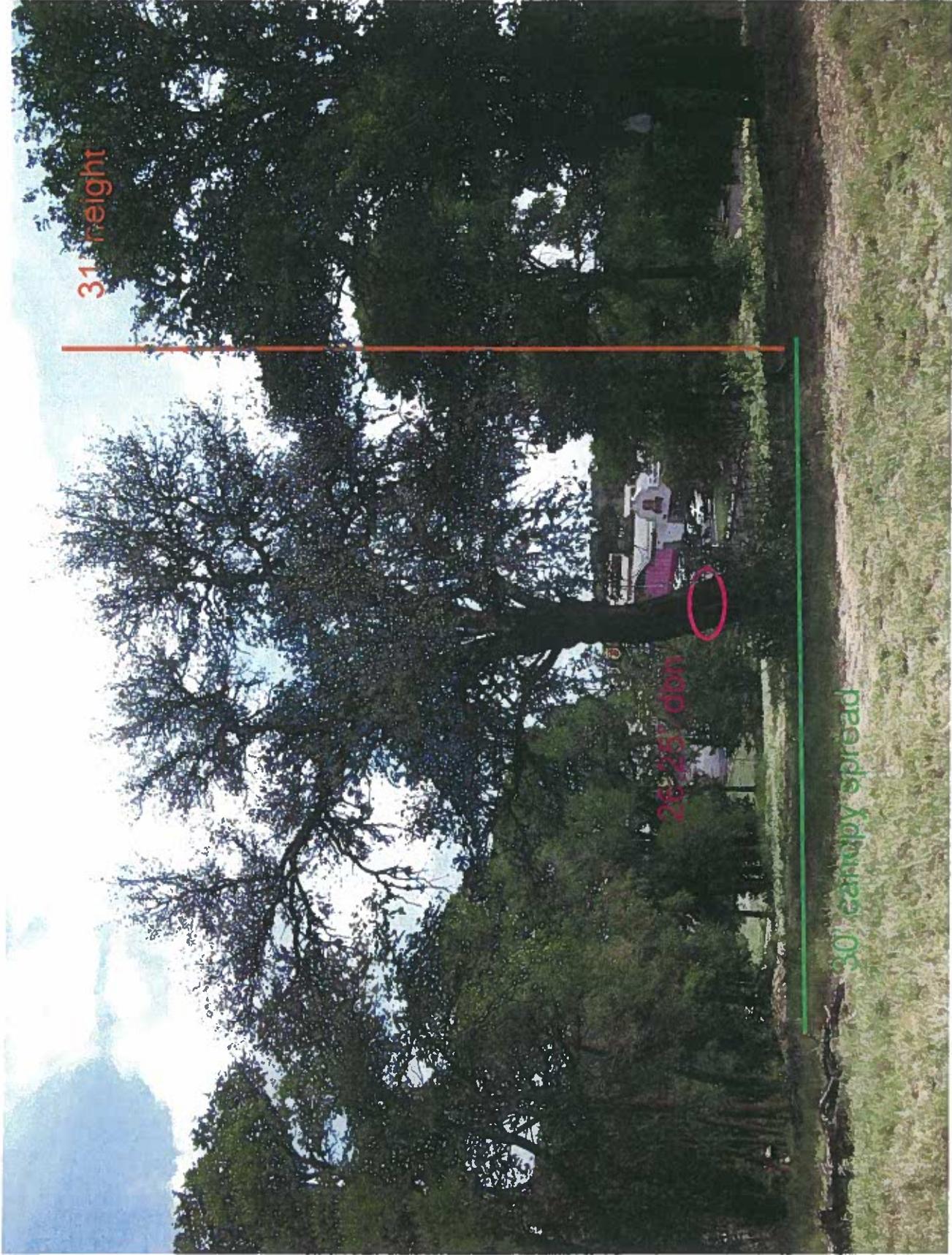


Exhibit 2

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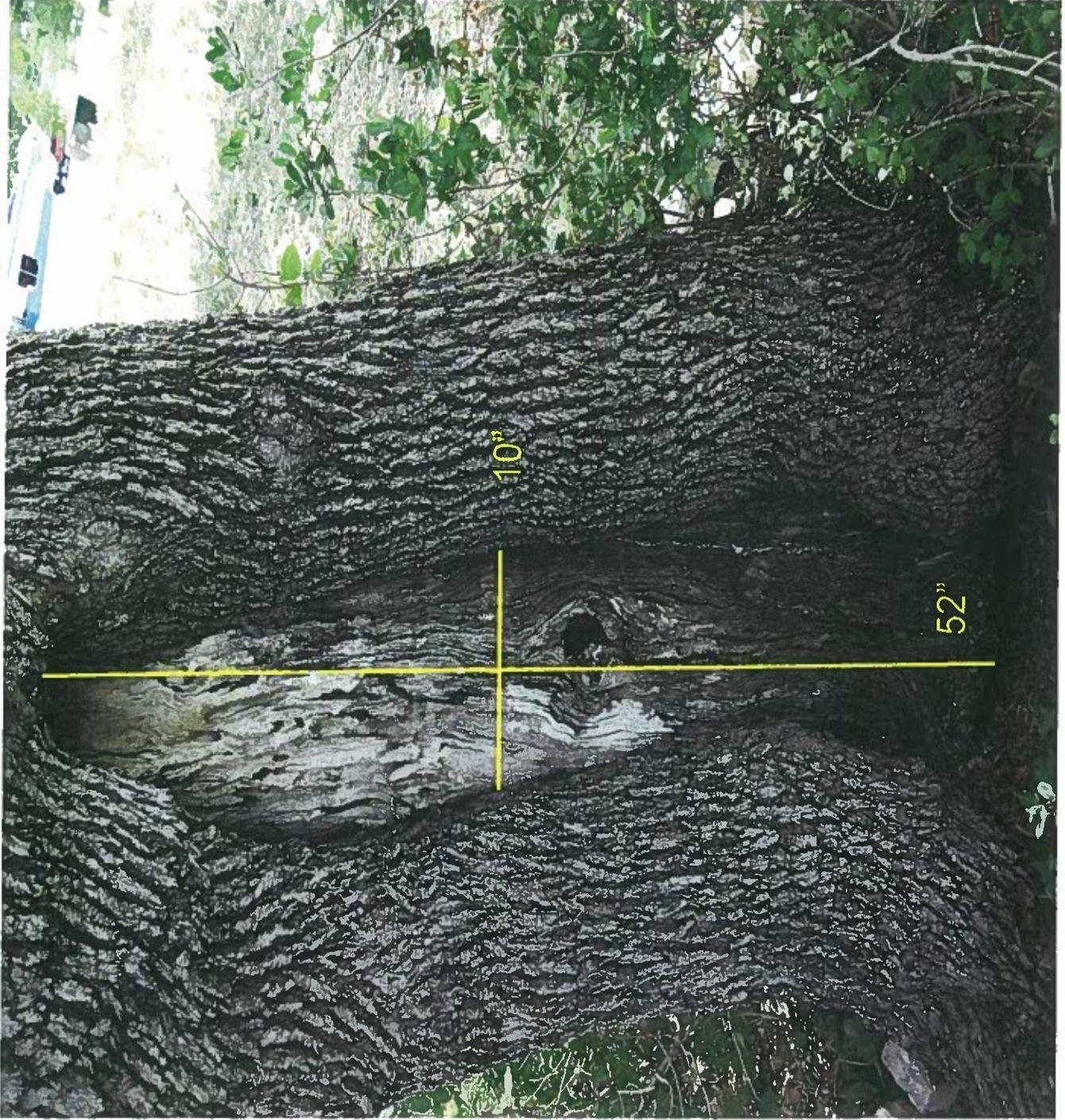


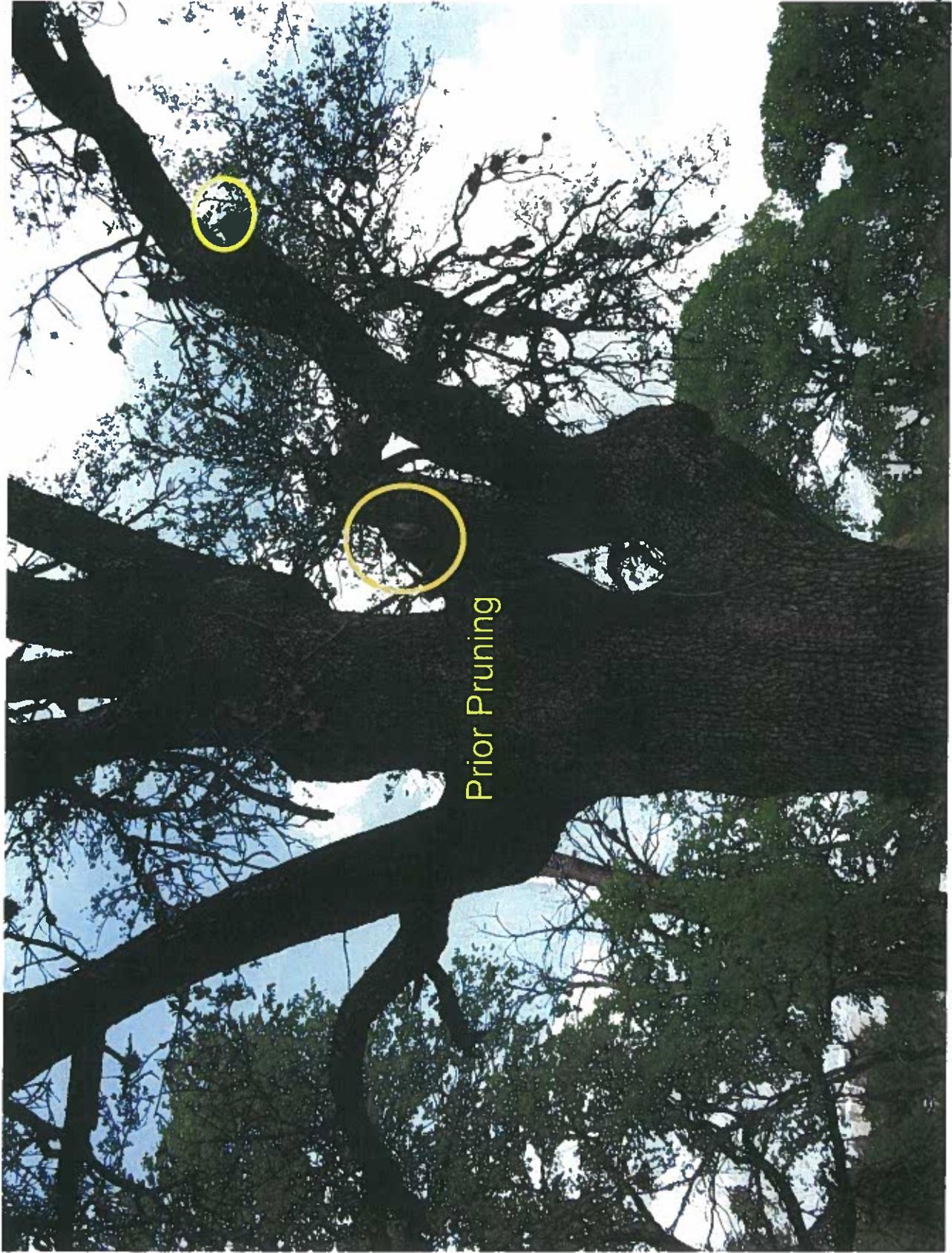
Exhibit 3

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Exhibit 4

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Prior Pruning

Exhibit 5

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TREE EVALUATION

Property address: 813 East 11th Street
 Date: 05/01/11
 Evaluator: Keith Mars
 SIGNATURE: [Signature]
 ISA/ASCA Certification #: TX-3677A

1. TREE CHARACTERISTICS

DBH of each trunk: 26.25" Common & Latin name: Live Oak Quercus fusiformis
 Location: Private / Public Estimated height & canopy spread (ft): 31' height, 30' canopy spread
 Age class: young / mature / over-mature / dead (if dead, there is no need to fill out section 2)
 Deadwood: 0% 0-10% 10-25% 25-50% >50%
 Form: generally symmetric / minor asymmetry / major asymmetry / stump sprout
 Pruning history: crown cleaned / excessively thinned / topped / crown raised
 pollarded / crown reduced / utility clearance / storm damage cleaning / none
 Crown class: dominant / co-dominant / intermediate / suppressed

2. TREE HEALTH

Foliage color: normal / chlorotic / necrotic Epicormics: Y / N
 Foliage density: normal / sparse Leaf size: normal / abnormal
 Annual shoot growth: 1-2 inches Twig dieback: Y / N
 Callus development: Y / N If so, is callusing: excellent / average / fair / poor
 Vigor class: excellent / average / fair / poor
 Major pests/diseases: None observed

3. SITE CONDITIONS

Site character: residence / commercial / industrial / park / open space / natural / other (see below)
 Landscape type: parkway / raised bed / container / open / other (see below)
 Irrigation: none / adequate / inadequate / excessive / trunk wetted
 Dripline paved: 0% 10-25% 25-50% 50-75% 75-100%
 Dripline w/ fill soil: 0% 10-25% 25-50% 50-75% 75-100%
 Dripline grade lowered: 0% 10-25% 25-50% 50-75% 75-100%
 Dripline grade raised: 0% 10-25% 25-50% 50-75% 75-100%
 Soil problems: drainage / shallow / compacted / small volume / other (see below)
 Obstructions: lights / signage / line of sight / view / overhead lines / traffic / other (see below)
 Wind (tree position): single tree / below canopy / above canopy / recently exposed / canopy edge
 Other: _____

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4. TREE DEFECTS – IDENTIFY ALL AREAS AND SEVERITY THAT APPLY TO EACH DEFECT

DEFECT TYPE	DEFECT AREA	DEFECT SEVERITY	NOTES	LEGEND
Poor taper				AREA T – Trunk(s) R – Root Flare L – Lateral Roots S – Scaffolds B – Branches SEVERITY S – Severe M – Moderate L – Low
Codominants/forks	S	L	2 nd branching	
Multiple attachments				
Included bark	S	L		
Excessive end weight				
Cracks/splits				
Hangers				
Girdling				
Wounds	T	M	see cavity	
Decay	T	M	decay column in trunk	
Cavity	T	M	52" x 10" cavity	
Conks/Mushrooms				
Bleeding				
Loose/cracked bark				
Nesting hole/bee hive				
Deadwood/stubs	B	M		
Borers/termites/ants				
Cankers/galls	B	L	galls	
Previous failure	B	M		

7. OTHER FEATURES

Lean: 55 degrees from vertical natural or unnatural Soil heaving: Y / N
 Decay in plane of lean: Y / N Roots exposed: Y / N Soil cracking: Y / N
 Lean severity: S / M / L Compounding factors: _____
 Suspect root rot: Y / N Mushroom/conk present: Y / N ID: _____
 Exposed roots: S / M / L Undermined: S / M / L
 Root pruned: feet from trunk Root area affected: % Buttress wounded: Y / N
 Restricted root area: S / M / L Potential for root failure: S / M / L

6. TARGET AND ABATEMENT

Use under tree: building / parking / traffic / pedestrian / recreation / landscape / hardscape
 Occupancy: occasional use / medium, intermittent use / frequent use Can target be moved: Y / N

RISK ABATEMENT

Action: prune / remove / other Comments: _____

7. COMMENTS OR OTHER RISK FACTORS

Low leaf area index, canopy foliage density is abnormal, continued decline is likely

12' form used to flare

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Condition Definitions

Excellent: The tree is nearly perfect in condition, vigor, and form. This rarely used category is generally applicable to small trees or shrubs that have been recently transplanted and are well established. It also applies to large trees that have established themselves successfully in the landscape.

Very Good: Overall, the tree is healthy and satisfactory in condition, vigor, and form. The tree has no major structural problems, no mechanical damage, and may only have insignificant aesthetic, insect, disease, or structure problems.

Good: The tree has no major structural problems, no significant mechanical damage, may have only minor aesthetic insect, disease, or structure problems, yet is in good health.

Fair: The tree may exhibit the following characteristics: minor structural problems and/or mechanical damage, significant damage from non-fatal or disfiguring diseases, minor crown imbalance or thin crown, or stunted growth compared to adjacent trees or shrubs. This condition can also include trees that have been topped, but show reasonable vitality and show no obvious signs of decay.

Poor: The tree appears unhealthy and may have structural defects such as codominant stems, severe included bark, or severe trunk and/or limb decay. A tree in this category may also have severe mechanical damage, crown dieback, or poor vigor threatening its ability to thrive. Trees in poor condition may respond to appropriate maintenance procedures, although these procedures may be cost prohibitive to undertake.

Critical: The tree has a major structural problem that presents an unacceptable risk, has very little vigor, and/or has an insect or disease problem that is fatal and, if not corrected, may threaten other trees on the property.

Dead: This category refers to dead trees only.

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25" diameter tree
to be preserved

Exhibit 7

PUBLIC HEARING INFORMATION

Although applicants and/or their agent(s) are expected to attend a public hearing, you are not required to attend. However, if you do attend, you have the opportunity to speak FOR or AGAINST the proposed development or change. You may also contact a neighborhood or environmental organization that has expressed an interest in an application affecting your neighborhood.

During a public hearing, the board or commission may postpone or continue an application's hearing to a later date, or recommend approval or denial of the application. If the board or commission announces a specific date and time for a postponement or continuation that is not later than 60 days from the announcement, no further notice is required.

A board or commission's decision may be appealed by a person with standing to appeal, or an interested party that is identified as a person who can appeal the decision. The body holding a public hearing on an appeal will determine whether a person has standing to appeal the decision.

A zoning ordinance amendment may include a conditional overlay which would include conditions approved by the Land Use Commission or the City Council. If final approval is by a City Council's action, there is no appeal of the Land Use Commission's action.

An interested party is defined as a person who is the applicant or record owner of the subject property, or who communicates an interest to a board or commission by:

- delivering a written statement to the board or commission before or during the public hearing that generally identifies the issues of concern (*it may be delivered to the contact listed on a notice*); or
 - appearing and speaking for the record at the public hearing;
- and:
- occupies a primary residence that is within 500 feet of the subject property or proposed development;
 - is the record owner of property within 500 feet of the subject property or proposed development; or
 - is an officer of an environmental or neighborhood organization that has an interest in or whose declared boundaries are within 500 feet of the subject property or proposed development.

A notice of appeal must be filed with the director of the responsible department no later than 14 days after the decision. An appeal form may be available from the responsible department.

For additional information on the City of Austin's land development process, visit our web site: www.ci.austin.tx.us/development.

Written comments must be submitted to the board or commission (or the contact person listed on the notice) before or at a public hearing. Your comments should include the name of the board or commission, or Council; the scheduled date of the public hearing; the Case Number; and the contact person listed on the notice.

Contact: Keith Mars, 512-974-2755
Public Hearing: June 28, 2011, Planning Commission

NIRAS Mehta
Your Name (please print)
1000 San Marcos #244
Your address(es) affected by this application
Appeal

I am in favor
 I object to

Signature: Andrew Mehta Date: 6/24/11

Daytime Telephone: 868-313-8490

Comments: Do not cut the tree down!!!

If you use this form to comment, it may be returned to:
City of Austin
Planning and Development Review - 4th floor
Keith Mars
P. O. Box 1088
Austin, TX 78767-8810

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PUBLIC HEARING INFORMATION

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- delivering a written statement to the board or commission before or during the public hearing that generally identifies the issues of concern (it may be delivered to the contact listed on a notice); or
- appearing and speaking for the record at the public hearing; and:
- occupies a primary residence that is within 500 feet of the subject property or proposed development;
- is the record owner of property within 500 feet of the subject property or proposed development; or
- is an officer of an environmental or neighborhood organization that has an interest in or whose declared boundaries are within 500 feet of the subject property or proposed development.

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Contact: Keith Mars, 512-974-2755

Public Hearing: June 28, 2011, Planning Commission

HILARY SAVAGE

Your Name (please print)

2000 San Marcos St. #260

Your address(es) affected by this application

H. Savage

Signature

Date

Daytime Telephone:

Comments: *This is a historical element of*

a very distinctive neighborhood in the history of this city. It is important that we protect it and NOT allow this tree to come down.

If you use this form to comment, it may be returned to:

City of Austin

Planning and Development Review - 4th floor

Keith Mars

P. O. Box 1088

Austin, TX 78767-8810

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